IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 859 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUSHILABEN L DALAL C/O RASHMI DALAL

Versus

AHMEDABAD EDUCATION SOCIETY

Appearance:

1. Special Civil Application No. 859 of 2001

MR DP VORA for Petitioner No. 1

MS KJ BRAHMBHATT for Respondent No. 1

MR MANGESH R MENGDEY for Respondent No. 2

MR PR ABICHANDANI Ld. AGP for Respondents No. 2,3-5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/11/2001

ORAL JUDGEMENT

1. Heard Mr. DP Vora learned counsel appearing for the petitioner and Mr. Abichandani learned AGP and Ms.

KJ Brahmbhatt, learned counsel for respondent no. 1.

2. The petitioner is a retired Professor serving with the Institute of respondent no. 1 has prayed to this Court by exercising the jurisdiction under Article 226 of the Constitution should issue appropriate writ, direction or order to the respondents to the effect that petitioner's pension papers and the bill as per the new pay-scale enforceable from 1.1.1986 be prepared and she may be paid other pensionary benefit etc. along with other increase as per Rules. I would like to mention the main prayers made in para-8 of the petition.

A) Your Lordships will be pleased to order and direct respondent no. 1 by an appropriate writ to present petitioner's pension papers and bill as per the new pay scale enforceable from 1.1.1986 with all relevant papers to the Director of Pension and Provident Fund - the respondent no. 4 herein forthwith and Your Lordships will be further pleased to order and direct respondent no. 4 and 5 to pass and pay pensionary benefits to the petitioner at 18% interest within 30 days of the order of the Hon'ble High Court.

B) xxx xxx

C) As the petitioner had to approach the Affiliated Colleges Tribunal and had to approach the Hon'ble High Court, twice in all throughout, had to make representations and give notice to respondent no. 1, an exemplary cost of Rs. 10,000/ be granted to the petitioner.

D) xxx xxx

4. During the course of submission, Mr. Vora has accepted that after filing of the petition, the petitioner has been paid the pensionary benefits, gratuity etc. and the petitioner is satisfied to that extent, however, the petitioner has not been paid any amount by way of interest for delayed payment and she is also praying for costs in terms of prayer clause(C) of the relief.

5. I have considered earlier orders passed by this Court on different dates. It is impliedly established by respondent no. 1 that the pension papers of petitioner were sent to the concerned department-authority in the month of August, 1986. I have considered the relevant page no. 66 onwards produced by respondent no. 1. The

stand of respondent State is that the respondent no. 1 Institute had never sent the papers to the concerned department till the year 1999 and, thus, the State Government or its machinery is not responsible for delayed payment. Both the affidavits filed by Mr. Ramanuj and Mr. Sabuwala on behalf of respondent no. 3 does not say anything about the papers received in the month of August, 1986. However, during the course of oral submissions, Mr. Abichandani has clarified that these papers were sent and received by the concerned Officer of the department but the same was for the purpose of paying provisional pension and after passing appropriate orders for provisional pension, the papers along with service book were sent back to the concerned College. The papers were sent to the department in the year 1986 only for the purpose of granting provisional pension. On careful reading of the letter addressed to the Director of Education (Incharge pensions for college teachers), State of Gujarat, at page 66, is clear that the papers were submitted for the purpose of grant of pension. There is no documentary evidence on record that these papers were ever sent back to the Institute for long. Papers were with respondent no. 1 for some years but the correspondence between respondents no. 1 & 3-4 inter-se are not able to offer any excuse. It reflects total non-application of mind and aptitude of taking the papers. Various rminders and representations along with Govt. resolutions were available on hand. The petitioner was to be treated retired on 14.6.1986 as per G.R. dated 31.12.1986 and decision of this court in Spl.CA No. 6877/1985 (confirmed by Division Bench in LPA No. 2736/98). It seems that officers of the department of Government machinery have tried to put curtain on some vital aspects, so that the delay caused by the State Government in granting pensionary benefits can be kept under carpet. The affidavit of respondent no. 1Institute is self explanatory and supported by documents and on the other hand, the affidavit filed by the Government Officer are not supported by any cogent documentary evidence. However, learned AGP Mr. Abichandani has hammered that the affidavit filed by the officers are on the strength of the documents available on record of the file. As per Ld. AGP this is a case of negligence on the part of respondent no. 1.

6. There seems some inter-se disputes between the officers of the Directorate of Higher Education and the department dealing with the pension and provident fund. Neither this court nor the petitioner is concerned that the inter-se dispute between the Director of Higher Education and the respondent no. 1 or between P.F.

department and Director of Higher Education, the fact remains that the petitioner has suffered a lot because of the delayed payment. Mr. Vora that the amount of more than Rs. 4 lacs remained with the Government with no fault on the part of the petitioner.

7. Mr. Vora has pointed out that even State of Gujarat evolved a policy that in case of delayed payment, employee can be awarded with interest at the rate of 12%. In response of this submission, the say of Mr. Abichandani is that the petitioner should be relegated to the concerned department where she can request for such payment. This submission may have some legal force, but I am not inclined to accept the submission being very technical in view of the fact that the petitioner has not received substantial amount for years and she has attained the age of 76 years. However, it is important to observe that as the Institute, where the petitioner served has sent the papers to the concerned Director of Higher Education very well in time i.e. month of August, 1986, the Institute cannot be fastened with the liability to pay the interest ultimately the amount remained with the Government and, therefore, payment of interest should be on the shoulder of State of Gujarat. Without finding any fault with the Government department specifically, I express my great concern that the entire Government machinery has not considered the number of requests extended by the petitioner with utmost care and delegent and this is a case where expedient decision could have been taken by the department well in time.

As this Court has to grant only limited relief qua the awarding of interest on the amount remained unpaid. The computation of interest made by the responsible officer of the department should be accepted. Learned counsel appearing for the petitioner does not dispute this computation. Respondent no. 4 Deputy Director had remained personally present once during proceedings before this Court in compliance of the order passed by this Court on 25.9.2001 and has tendered a chart of computation of the amount of interest. As per the computation made by respondent no. 4, the petitioner is entitled to interest of Rs. 2,04,552-75ps. The statement is formally taken on record and the same is made a part of the record of this petition.

8. For reasons, this petition is partly allowed. The petitioner is awarded the interest at the rate of 12% and she be paid Rs. 2,04,552-75 by respondent-State of Gujarat within 8 weeks from the date of receipt of the order of this Court.

So far as the award of costs of this petition is concerned, Mr. Vora submitted that she must be awarded substantial amount by way of costs in view of the fact that she was compelled to approach Affiliated College Tribunal and this Court twice and on one occasion her college itself had approached the Court on her behalf, the Government should not be pardoned from the liability of the costs.

I have considered the totality and facts of this case on record, but I am not inclined to award the costs of this petition.

Rule is made absolute to the aforesaid extent only. DS Permitted.

(C.K. BUCH, J.)
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